

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD LEE BULLOCK,

Plaintiff,

v.

JOHN M. DOWBAK, et al.,

Defendants.

No. 2:23-cv-1634 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
7 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
8 court will, however, grant leave to file an amended complaint.

9 Plaintiff complains about medical care. Providing inadequate medical care can violate the
10 Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A violation occurs when a
11 prison official causes injury as a result of his or her deliberate indifference to a prisoner’s serious
12 medical needs. Id. In his complaint, plaintiff does not sufficiently allege that the medical care
13 provided to him was the result of deliberate indifference as much as plaintiff’s care was simply
14 inadequate. A showing of merely negligent medical care is not enough to establish a
15 constitutional violation. Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429
16 U.S. at 105-106. A difference of opinion about the proper course of treatment is not deliberate
17 indifference, nor does a dispute between a prisoner and prison officials over the necessity for or
18 extent of medical treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung,
19 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

20 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
21 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
22 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
23 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
24 § 1983 unless there is some affirmative link or connection between a defendant’s actions and the
25 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
26 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
27 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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1 Plaintiff names San Joaquin General Hospital, operated by the county, as a defendant.
2 Municipalities cannot be held vicariously liable under § 1983 for the actions of their employees.
3 Monell v. Dep't of Social Services, 436 U.S. 585 at 691, 694 (1978). "Instead, it is when
4 execution of a government's policy or custom, whether made by its lawmakers or by those whose
5 edicts or acts may fairly be said to represent official policy, inflicts the injury that the government
6 as an entity is responsible under § 1983." Id. at 694.

7 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
8 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
9 complaint be complete in itself without reference to any prior pleading.

10 In accordance with the above, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 12 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
13 shall be collected and paid in accordance with this court's order to the Director of the California
14 Department of Corrections and Rehabilitation filed concurrently herewith.
- 15 3. Plaintiff's complaint is dismissed.
- 16 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
17 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
18 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
19 number assigned this case and must be labeled "Amended Complaint." Failure to file an
20 amended complaint in accordance with this order will result in a recommendation that this action
21 be dismissed.

22 Dated: August 24, 2023

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24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE
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